

R E M A R K S

Applicants have received and carefully reviewed the Office Action mailed September 12, 2006. Claims 1, 38, 40, 42, and 44-51 have been amended. Support for the amendments and new claim is found in the specification, claims, and drawings as originally filed. No new matter has been added. Reconsideration and allowance of the pending claims are respectfully requested.

Specification Objections

The specification is objected to for various informalities. The specification has been amended as suggested by the Examiner. Withdrawal of the objections is respectfully requested.

Drawing Objections

The drawings are objected to for not depicting reference number 40. In Fig. 4, reference number 42 refers to the curved introducer. In the specification, the introducer was incorrectly referred to as reference number 40. The specification has been amended to correct this typographical error.

Claim Objections

Claims 1, 47, 49 and 50 are objected to for various formalities. The claims have been amended as suggested by the Examiner. Withdrawal of the objections is respectfully requested.

Rejections under 35 U.S.C. § 112, first paragraph

Claims 38, 40 and 42 are rejected as containing subject matter which was not described in the specification. Applicants respectfully traverse the rejection. However, the claims have been amended to address other rejections, and these amendments remove the language objected to by the Examiner. Reconsideration and withdrawal of the rejection are respectfully requested.

Rejections under 35 U.S.C. § 102(b)

Claims 44, 46, 48, 49 and 51 are rejected as being anticipated by Hauser et al. (US 5,385,574). Applicants submit that independent claims 44, 46, 48, 49 and 51, as amended, recite

elements not taught or suggested by Hauser et al. In particular, claim 44, as amended, recites a housing that is curved along a longitudinal axis; claim 46 recites cardioversion-defibrillation circuitry and electrodes configured to deliver a waveform of from about 3 volts to about 2000 volts; claim 48 recites a device having monitoring circuitry configured to measure respiration; claim 49 recites a long thin curved housing; and claim 51 recites a cardioverter-defibrillator having detection circuitry and cardioversion-defibrillation circuitry that are programmable to adapt the electrical therapy in response to the physiological measures. Hauser et al. do not teach such elements. Additionally, there is no motivation or suggestion for one of ordinary skill in the art to modify the device of Hauser et al. to achieve a device having the claimed elements. Reconsideration and withdrawal of the rejection are respectfully requested.

Rejections under 35 U.S.C. § 103(a)

Claim 47 is rejected as being unpatentable over Hauser et al. as applied to claim 46, and further in view of Ostroff (US 5,215,081). For at least the reasons set forth above, Hauser et al. do not teach or suggest the elements of independent claim 46, from which claim 47 depends. Ostroff does not provide what Hauser et al. lacks. Thus even if one were to combine the teachings of Hauser et al. and Ostroff, one would not arrive at the claimed device.

Claim 50 is rejected as being unpatentable over Hauser et al. in view of Kroll (US 5,643,323). Independent claim 50, as amended, recites a cardioverter-defibrillator having a housing that is curved along a longitudinal axis, the housing having first and second ends, the first end being thicker than the second end. Neither Hauser et al. nor Kroll teach such a structure. Additionally, there is no motivation or suggestion for one of ordinary skill in the art to modify Hauser et al. or Kroll to achieve the claimed structure. Reconsideration and withdrawal of the rejections are respectfully requested.

Double Patenting

Claims 1, 38, 40, 42 and 45 are rejected as claiming the same invention as that of claims 1, 35, 69, 85 and 95 & 100, respectively, of prior U.S. Patent No. 6,647,292. Applicants submit that the amendments to claims 1, 38, 40, 42, and 45 overcome this rejection. Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 44, 46 and 47 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 95, 100 and 99 (including the limitations of claim 95) of U.S. Patent No. 6,647,292. Applicants submit that the amendments to claims 44, 46 and 47 overcome this rejection. Reconsideration and withdrawal of the rejection are respectfully requested.

Reconsideration and reexamination are respectfully requested. It is submitted that, in light of the above remarks, all pending claims are now in condition for allowance. If a phone conference is believed necessary to resolve any outstanding issues with respect to the above discussion, the Examiner is respectfully requested to contact the undersigned attorney.

Respectfully submitted,

Gust H. Bardy et al.

By their Attorney,



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